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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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10 **BRANCH BANKING AND TRUST
COMPANY,**

2:12-cv-0453-KJD-NJK

11 Plaintiff,

12 vs.

13 **SMOKE RANCH DEVELOPMENT,
LLC, et al.,**

14 **ORDER**

15 Defendants.

Defendants' Renewed Motion to Extend
Discovery Deadlines (#66)

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17 This matter comes before the Court on Defendants' Motion to Extend Discovery
18 Deadlines (#66). The Court has considered the Defendants' Motion (#66), the Plaintiff's
19 Response (#70), and the Defendants' Reply (#72).

20 **BACKGROUND**

21 The Defendants have requested a 90-day extension of the discovery cut-off date, the
22 deadline for dispositive motions, and the deadline for the proposed joint pre-trial order. Motion
23 to Extend (#66). The Defendants argue that additional time is needed for (1) the return on
24 Defendants' DOJ subpoena, (2) the return on Defendants' Equisource subpoena, (3) redepositing
25 Tamara Stidham, (4) redepositing Ron Fuqua, and (5) redepositing Kendal Britton.

26 **DISCUSSION**

27 Applications to extend discovery deadlines must be supported by good cause for the
28 extension. LR 26-4; Fed.R.Civ.P. 16(b)(4).

1 Here, the Defendants have requested a 90-day extension of discovery deadlines for two
2 main reasons: (i) the Defendants could not have anticipated that the DOJ and Equisource would
3 not respond to the subpoenas before the deadline; and (ii) the Plaintiffs produced documents
4 relevant to the depositions after the depositions already occurred, and therefore, continued
5 depositions are necessary.

6 A. Subpoenas

7 Under Rule 45(c)(3)(A)(I), non-Parties are also entitled to “reasonable time” to comply
8 with subpoenas. Courts must determine what is reasonable based on the circumstances of each
9 particular case. *Fernandez v. Penske Truck Leasing Co.*, 2013 WL 438669, *1 (D. Nev. Feb. 1,
10 2013); citing *Paul v. Winco Holdings, Inc.*, 249 F.R.D. 643, 656 (D. Idaho 2008); see also *Todd v.*
11 *LaMarque*, C 03-3995 SBA, 2008 WL 564802, *3 (N.D. Cal. Feb. 28, 2008) (finding 20 days
12 was a reasonable amount of time to require production of investigation documents and appear in
13 court); *Watson v. State of Montana*, 2006 WL 2095420 (D. Mont. July 27, 2006) (finding
14 subpoena which ordered production of a large quantity of documents in one business day - the
15 day before trial - was unreasonable).

16 Here, the Defendants issued their subpoenas three weeks before the close of discovery.
17 Concerning the DOJ subpoena, the DOJ has requested additional time to produce the requested
18 documents because the Assistant United States Attorney who is handling the response to the
19 subpoena left on a two-week vacation a week before the production was due. Declaration of
20 William Schuller at 2, attached as Exhibit A to Motion (#66). As for the Equisource subpoena,
21 the Defendants have attempted to contact Equisource, but have yet to receive a response. Thus,
22 the Defendants argue, they could not have predicted that they would not receive responses to
23 their subpoenas in the allotted time.

24 However, the Defendants have not provided the Court with what documents were
25 requested with either subpoena. Indeed, the Court has no information concerning what
26 documents, nor how many documents, were requested. Accordingly, the Court cannot determine
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1 whether three weeks was a reasonable amount of time to respond. Due to this lack of
2 information, the Court finds that an extension of discovery to in order to receive the subpoena
3 returns is not appropriate at this time.

4 **B. Continued Depositions**

5 1. *Mr. Ron Fuqua and Ms. Tamara Stidham*

6 The Defendants assert that Mr. Ron Fuqua and Ms. Tamara Stidham must be re-deposed
7 because the Plaintiff did not make certain disclosures until February 8, 2013, which was after
8 Furqua and Stidham had been deposed. This argument is not convincing. The Plaintiff's
9 disclosures, which were made on February 8, 2013, were due on February 8, 2013. Thus, it could
10 not have been a surprise to the Defendants when they received the disclosures on February 8,
11 2013. Accordingly, these disclosures are not good cause for an extension of the discovery
12 deadlines.

13 2. *Kendal Britton*

14 Concerning the deposition of Kendal Britton, the Defendants point to the fact that the
15 Plaintiffs did not disclose the Summary Appraisal Report completed by Kendal Britton until
16 February 12, 2013, which was after Britton was deposed. The Defendants assert that they now
17 need time to depose Britton on the newly-disclosed Appraisal, because the Plaintiff may have
18 used the appraisal to receive a higher reimbursement from the FDIC. The Plaintiffs admit that
19 they did not disclose the report until February 12, 2013, but claim that they did so inadvertently.
20 The Plaintiffs also claim that the appraisal has "little impact" on the current litigation; thus it
21 does not justify re-opening discovery.

22 When determining whether good cause exists to re-open discovery, the Court considers
23 the following factors:

24 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the
25 non-moving party would be prejudiced, 4) whether the moving party was diligent in
26 obtaining discovery within the guidelines established by the court, 5) the foreseeability of
27 the need for additional discovery in light of the time allowed for discovery by the district
28 court, and 6) the likelihood that the discovery will lead to relevant evidence.

1 *U.S. ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir. 1995) vacated on other
2 grounds, 520 U.S. 939 (1997) (citing *Smith v. United States*, 834 F.2d 166, 169 (10th Cir.1987).

3 Here, all but the second factor weigh in favor of finding good cause. First, trial is not
4 imminent. Trial has not yet been set and the joint pre-trial order is not due until April 17, 2013.
5 Second, the Plaintiff would not be prejudiced by a small re-opening of discovery for the purpose
6 of re-depositing one witness. It was at the Plaintiff's error that the Defendants did not have all the
7 necessary documents for the initial deposition, and the Plaintiff therefore should have recognized
8 that the deposition would need to be continued. Third, the Defendants scheduled and conducted
9 Britton's deposition within the deadlines established by the Court, and thus were diligent.
10 Fourth, the Defendants could not have foreseen that the Plaintiff would inadvertently fail to
11 disclose the appraisal until after Britton's deposition. Fifth, the Defendants have represented to
12 the Court that, upon information and belief, they believe re-depositing Britton will lead to relevant
13 evidence, and the Plaintiff concedes that the appraisal does have an impact on the current
14 litigation.

15 Thus, having considered these factors, the Court finds that good cause exists to re-open
16 discovery for the limited purpose of re-depositing Britton, and that the other discovery deadlines
17 should also be extended accordingly. However, scheduling and conducting the continued
18 deposition should not take the requested 90 days. Rather, the Court finds that the good cause to
19 re-open discovery only extends to a 21 day re-opening of discovery, for the limited purpose of
20 continuing the deposition of Britton. A longer re-opening of discovery would highly prejudice
21 the Plaintiff and its right to a timely resolution of this matter.

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CONCLUSION

Based on the foregoing, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Defendants' Motion to Extend Discovery Deadlines (#66) is **GRANTED in part**;

IT IS FURTHER ORDERED that discovery is re-opened for 21 days for the limited purpose of continuing the deposition of Mr. Kendal Britton;

IT IS FURTHER ORDERED that the remaining discovery deadlines are extended as follows:

- Discovery Cut-Off: April 1, 2013
- Deadline for Dispositive Motions: May 1, 2013
- Proposed Joint Pre-Trial Order: May 31, 2013

DATED this 11th day of March, 2013.

NANCY J. KOPPE
United States Magistrate Judge